

Before the
Federal Communications Commission
Washington, D.C. 20554

Electronic Filing of Documents in Rulemaking Proceedings

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GC Docket No. 97-1

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Federal Communications Commission
o. 97-11
Office of Secretary

I. Introduction and Summary

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

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comments of others. This will enable them to participate in the Commission's processes more easily and efficiently.

2. To achieve these benefits, the Commission should adopt its proposal to allow, but not require, parties to file comments electronically in informal rulemaking proceedings over the Internet using the World Wide Web.³ The Commission should also consider procuring equipment that would allow parties to submit filings using electronic data interchange technology. To help secure the full benefits of the Commission's proposal, the right to file electronically should not be limited to informal rulemaking comments but should also be extended to filings of general applicability. Electronic filings should have the same status in the proceeding as paper filings, and the Commission should not preclude any party from submitting paper copies in lieu of, or in addition to, electronic versions. If a filing is made both electronically and on paper, the paper copy should be considered the "official" filing in the event of any discrepancies with the electronic version. The Commission should, however, request that parties that file only on paper also submit copies on computer diskette, so that they may be posted on the Commission's Web page. The Commission should specify unique Internet Uniform Resource Locators ("URLs") on its Web site for each proceeding to facilitate access. In allowing for electronic filing, however, the Commission will need to address several issues, the most important of which are security and timeliness, as discussed below.

³ *Notice of Proposed Rulemaking*, FCC 97-113 (rel. Apr. 7, 1997) ("Notice").

II. Electronic Filing Should Not Be Limited To Rulemaking Proceedings.

3. The Commission proposes initially to limit the right to file electronically to comments and replies in informal rulemaking proceedings.⁴ The benefits of electronic filing should not be limited to such proceedings, however. Instead, electronic filings should also be permitted in other proceedings of general applicability, such as petitions for rulemaking, comments and replies in notices of inquiry proceedings, reconsideration petitions in rulemaking proceedings, and motions and *ex parte* submissions in any of these proceedings.

4. As pointed out in the Notice, it is reasonable to provide a period of time for the Commission and parties to gain experience with the new system before broadening its scope.⁵ It can accomplish this by adopting a broad set of electronic filing rules in this proceeding, but stating that comments and replies in rulemaking proceedings may be filed electronically on the effective date of the rules, while electronic filing of additional types of pleadings, motions, and petitions will be permitted beginning on a later date. This date could be six months thereafter or another date that the Commission establishes by order or public notice. In the interim, parties should be encouraged to file “unofficial” copies of pleadings in non-rulemaking proceedings electronically to help the Commission and the public gain experience and identify any problems.

⁴ Notice at ¶¶ 1, 10.

⁵ *Id.* at ¶ 10.

III. The Commission Must Study Security Issues and Address Timeliness.

5. The Commission asks whether any special measures should be taken to authenticate or secure electronic comments.⁶ The extent to which security will be a problem, such as whether pleadings are likely to be forged, cannot reasonably be predicted.⁷ However, the Commission should begin now to develop security procedures and contingent plans in the event security problems arise. The Commission should examine various forms of Web-based electronic signatures or digital certificates that are currently under development.⁸ Other security measures that are worthy of study include the option of filing pleadings using electronic data interchange technology and encryption. Bell Atlantic and NYNEX stand ready to work with the Commission to experiment with use of such technologies.

6. The Commission should not adopt its proposal that the filing date for documents submitted electronically would be the date the Commission receives the document.⁹ Instead, the document should be considered filed at the time it was sent electronically. Otherwise, the timeliness of filings could become a serious concern with Internet filings. Bell Atlantic and NYNEX have experienced delays of many hours or even a day or more in the

⁶ *Id.* at ¶ 16.

⁷ The Commission recognizes that it will need to use a secure database that will prevent persons other than the Commission's staff from modifying filings that are submitted and posted electronically. *See id.* at ¶ 15.

⁸ *See* Lorie Jean G. Oel, "Digital Signatures," in *Online Law, The SPA's Legal Guide to Doing Business on the Internet*, 41-49 (Thomas J. Smedinghoff, Ed.).

⁹ Notice at ¶ 18.

transmission of Internet messages and documents. A party could not be certain that it had met a filing deadline even if it transmitted a document electronically hours in advance. To minimize the likelihood of missing a deadline, parties might well take the precaution of filing documents on paper as well as electronically. This duplication of filings would negate many of the benefits of electronic filing.

7. In order to determine when the document was sent, the filing party should be required to indicate on the document the date and time that the document was filed electronically. The Commission should accept that date and time as *prima facie* evidence that the pleading was made at the specified time.¹⁰ The Commission should send an electronic confirmation to the filing party when the document is actually received, as it proposes.¹¹ If the filing party does not receive an automatic confirmation from the Commission promptly (such as within twelve hours of sending), it should be incumbent upon that party to take additional steps to ensure that the document has arrived successfully at the Commission or to refile (on paper) if necessary, in order to have the filing considered timely.¹²

¹⁰ Some software may automatically provide a time and date “stamp” at the time of transmission. Time and date indications, whether manual or automated, can be falsified. The Commission should consider such falsification to be a serious breach and take strong action against the guilty party.

¹¹ Notice at ¶ 18.

¹² The Commission should establish a separate telephone number for inquiries as to whether electronically-filed documents have been received in those cases where electronic confirmation is not received quickly.

IV. Additional Service at the Commission Should be Permitted, Not Required;
Electronic Service on Other Parties Should Be Permitted.

8. The Commission properly proposes to require the filing of only a single electronic copy of a pleading, with the Secretary's office undertaking responsibility for internal Commission distribution.¹³ Parties should not be precluded, however, from providing courtesy copies to individuals and offices within the Commission, either electronically or on paper. To assist that process, the Commission should include in its telephone directory the Internet electronic mail addresses of its professional staff and of each office.

9. The Commission should also adopt its proposal to allow electronic service to other parties, including those to whom service is required under the Rules, if the party agrees to accept electronic service.¹⁴ A party should indicate willingness to accept electronic service in the pleading to which a response is to be served (such as in a petition for reconsideration) and specify its electronic filing address in the signature block. The party receiving electronic service should be prepared to send a prompt acknowledgment of receipt to the sender.¹⁵

¹³ Notice at ¶ 12.

¹⁴ *Id.* at ¶ 20.

¹⁵ If a pleading is served electronically, the three-day period for mailing specified in the Commission's Rules for further responses would be inapplicable. *See* 47 C.F.R. § 1.4(h).

V. Miscellaneous Issues

10. The Commission should require that documents served electronically contain numbered paragraphs, to allow for later citation or correction. Documents downloaded into different formats or programs may not have the same pagination as the original, as the Commission recognizes,¹⁶ and later citation by page number may be confusing. For that reason, parties citing electronically-filed pleadings should cite them by paragraph number. Similarly, the Commission should not specify page limits for filings that may be made electronically. Instead, it should specify a maximum word count.¹⁷ The Circuit Rules of the United States Court of Appeals for the District of Columbia provide for a word rather than page limit in briefs that are prepared using word processing programs or standard typographic printing.¹⁸ Those rules appear to assume an average of 250 words per page, because the corresponding page counts for briefs prepared by typewriters or word processors that do not count words are one-two hundred fiftieth of the word counts.¹⁹ The Commission can reasonably base word count limits on this multiple.

11. Attachments to pleadings which are not available as electronic originals should be scanned wherever reasonably possible and provided electronically as graphic images.

¹⁶ Notice at ¶ 22.

¹⁷ Most word processing programs have features which generate the word count of a document.

¹⁸ D.C. Cir. R. 28(d)(1).

¹⁹ D.C. Cir. R. 28(d)(2).

Where scanning is not available or feasible, the attachments should be filed on paper with the Secretary. The electronic filing should list any attachments that were filed on paper.²⁰

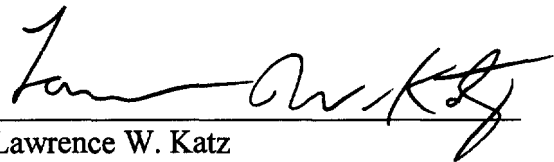
12. Finally, the Commission should ensure that pleadings are posted quickly. It should assist parties by preparing a docket sheet listing all filings and specifying whether they were filed electronically, on paper, or both.

²⁰ Attachments that are filed on paper should be served on the parties in those instances where service is required under the Commission's Rules. If service of any part of a filing is by mail, such service triggers the additional three days for response specified in 47 C.F.R. § 1.4(h).

VI. Conclusion

13. Bell Atlantic and NYNEX urge the Commission to adopt its proposal for the electronic filing of pleadings, with the changes suggested above.

Respectfully Submitted,

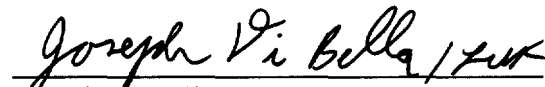


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May 21, 1997